



Agricultural Marketing Service

7 CFR Part 800

[Doc. No. AMS-FGIS-20-0001]

RIN 0581-AD94

Fees for Supervision of Official Inspection and Weighing Services Performed by Delegated States and Designated Agencies, Miscellaneous Fees for Other Services, and Removal of Specific Fee References

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule revises regulations under authority of the United States Grain Standards Act (USGSA) by implementing a standardized formula model for calculating Federal Grain Inspection Service (FGIS) supervision fees. The revision enables FGIS to adjust supervision fees annually in order to maintain an appropriate operating reserve as required by the USGSA. As with other Agricultural Marketing Service (AMS) fee-based programs, AMS will publish annual FGIS fee updates in the **Federal Register** and post updated fee schedules on its website. The revision also eliminates or revises certain registration and duplication fees charged by FGIS.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: October 1, 2021.

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SUPPLEMENTARY INFORMATION: The USGSA (7 U.S.C. 71 *et seq.*) authorizes FGIS, a program area within AMS, to supervise grain inspection and weighing services

provided by official agencies and to charge and collect reasonable fees to cover costs of such supervision. These fees are charged by official agencies to their customers (grain industry) as part of the overall fee charged for inspection and weighing services.

Supervision fees collected by FGIS cover, as nearly as practicable, all operating and administrative costs associated with supervising official agencies.

FGIS regularly reviews user-fees to determine whether fees are adequate and would likely maintain appropriate operating reserve funds. On July 1, 2016, following such a review (81 FR 41790; June 28, 2016), FGIS suspended the assessment of fees for supervision of official inspection and weighing services performed by delegated States and designated agencies to reduce the operating reserve. This suspension ended on December 31, 2020. FGIS's operating reserve at that time was adequate to cover six months' operating expenses as required, but FGIS resumed the assessment of tonnage fees to cover operating costs of supervision.

FGIS is implementing the use of a standardized formula model to determine if user-fee adjustments are necessary to recover costs associated with administering the official agency supervision program. This action is intended to assure FGIS maintains the financial stability necessary to provide inspection and weighing services to the grain industry, which facilitates the sound and orderly marketing of grain in domestic and export markets.

AMS invited comments on the proposed rule identifying changes to the methodology for establishing FGIS user fees for supervision of official inspection and weighing services performed by delegated agencies and the removal of specific references to user fees (86 FR 12119; March 2, 2021). AMS received two comments in response to the proposed rule that were supportive. Comments indicated that this approach would moderate fee changes and provide for predictable time intervals.

Fees for supervising official agencies were last revised in 2005 (70 FR 50149; August 26, 2005). The fee schedule at 7 CFR 800.71(a)(2) (Schedule B) has not been changed since then. Currently, the FGIS fee for supervision of official agencies is set at \$0.011 per metric ton of domestic U.S. grain shipments inspected or weighed, or both, including land carrier shipments to Canada or Mexico.

Financial data for the supervision of official agencies program for fiscal years (FY) 2016 through 2020 is reviewed in Table 1.

Table 1: Supervision of Official Agencies Financial Analysis
(Millions of Dollars) *

	FY 16	FY 17	FY 18	FY 19	FY 20
Revenue	\$1.91	\$0.00	\$0.00	\$0.00	\$0.00
Obligations	\$1.43	\$1.78	\$1.88	\$1.55	\$1.81
Annual Surplus or (Deficit)	\$0.47	(\$1.78)	(\$1.88)	(\$1.55)	(\$1.81)
Operating Reserve – running balance	\$8.73	\$6.95	\$5.08	\$3.53	\$1.73

*Figures may not sum due to rounding and adjustments of prior year obligations.

As illustrated by Table 1, though revenues have been suspended since July 2016, FGIS obligations have generally increased due to inflation and cost of living adjustments. The exception was in FY19, when accounts of the former Grain Inspection, Packers and Stockyards Administration (GIPSA), which included FGIS, were merged with AMS, along with the close-out of obligations. As explained above, the current fee structure generated a recurring annual operating surplus for several years, resulting in a decision to suspend the collection of the fees in 2016 to gradually reduce operating reserves to meet AMS's target of maintaining funds to cover between three to six months' expenses. Monthly costs to operate the supervision of official agencies in FY 2020 were \$151,000. Thus, AMS would consider an operating reserve between \$0.45 million and \$0.91 million (3 and 6 times the monthly operating cost, respectively) at the end of FY 2020 to be appropriate. At the end of FY 2020, the operating reserve balance was \$1.73 million, enough to cover 11½ months of expenses.

To prevent accumulating a reserve balance beyond the targeted amount (3 to 6 times the monthly operating cost), AMS is adopting a standardized formula for calculating user fees for each calendar year (CY). AMS expects that reducing fees in this manner will gradually reduce the reserve fund balance, while allowing FGIS to continue making strategic operational expenditures to meet industry expectations and achieve United States Department of Agriculture (USDA) goals.

Calculations

AMS will calculate the supervision tonnage fee using prior year's actual costs and average yearly tonnage of domestic U.S. grain shipments inspected or weighed, or both, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years.

AMS adds new § 800.71(b)(2)(i) and (ii) to include the following formulas for calculating fee rates for CY 2021 and succeeding years:

Operating Reserve Adjustment. FGIS will divide the total prior year supervision costs by 2 to determine the 6-months operating reserve goal. From that value, FGIS will subtract the FY operating reserve ending balance to obtain the operating reserve adjustment for determining the supervision tonnage fee.

The operating reserve adjustment for calendar year 2021 is -\$821,925. The calculation, using FY 2020 supervision costs of \$1,807,633, is: \$1,807,633 divided by 2, which equals \$903,817. Subtract the FY 2020 operating reserve ending balance of \$1,725,742 to equal -\$821,925.

Supervision tonnage fee. FGIS will add total prior-year supervision costs and the operating reserve adjustment, then divide the result by the average tonnage for the previous 5-years. If the calculated fee is zero or a negative value, FGIS will suspend collection of supervision tonnage fees for the next calendar year.

The supervision tonnage fee for calendar year 2021 is \$0.004 per ton. The calculation, based on FY 2020 supervision costs of \$1,807,633, is \$1,807,633 plus the

operating reserve adjustment of -\$821,925, which equals \$985,670. Divide this adjustment rate by the 5-year average tonnage of 232,398,847, to derive \$0.004 per ton.

Fiscal Year	Metric Tons
2016	238,996,932
2017	244,355,906
2018	234,298,085
2019	206,693,881
2020	237,649,430
5-year Rolling Average	232,398,847

In addition to implementing a new formula for calculating supervision tonnage fees, this final rule also revises:

- Section 801.71(a)(2) – Schedule B – to remove the currently specified fee and to provide that annual supervision fees will be as published on the AMS website.
- The introductory text of § 801.71(b) – Annual review of fees – to convey that weighing and inspection fees, as well as supervision fees, will be recalculated annually.
- Section 801.71(b)(1) – to clarify that tonnage fees calculated in that section pertain only to FGIS inspection and weighing (Schedule A) fees.
- Section 801.71(b) – by redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2) that outlines supervision fee calculations, as described earlier.

Miscellaneous fees for other services

In addition to the above changes related to supervision fees, AMS is implementing the following changes to other fee requirements in § 801.71(d).

This final rule removes the introductory text of § 801.71(d)(1)(i) – Registration certificates and renewals, and consolidates paragraphs (d)(1)(i)(A) and (B) of that section, which currently provide flat fees for registering business operations that buy,

handle, weigh, or transport grain for sale in foreign commerce or for such businesses that are also in a control relationship with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce. Currently, the registration fee for the former is \$135, and the registration fee for the latter is \$270. This final rule combines the two charges into one. AMS will calculate the export registration fee using the following formula and adjust the fees annually, as necessary.

Registration certificates and renewals. FGIS will multiply the § 800.71(a) Table 1 of Schedule A noncontract hourly rate by a quantity of five. The fee covers FGIS personnel costs to review applications, fee publication expenses, and administrative expenses. The Schedule A non-contract hourly rate is currently \$63. Thus, the consolidated certificate registration and application fee for 2021 will be \$63 multiplied by a quantity of 5, or \$315. AMS will publish the annual rate in the **Federal Register** and on the AMS website.

This final rule removes § 800.71(d)(1)(ii), which provides charges for providing extra copies of registration certificates, as certificates are now provided electronically for printing by the applicant.

This final rule revises § 800.71(d)(2) to remove the provision of a flat fee for applications to amend an official agency designation. FGIS will instead calculate the rate using the following formula, and the rate will be adjusted annually and published on the AMS website.

Designation amendments. FGIS will calculate the rate using the **Federal Register** publication rate for three columns, plus one hour of noncontract hourly rate from § 800.71(a) Table 1 of Schedule A. The fee covers FGIS personnel costs, administrative expenses, and **Federal Register** publication costs.

The current rate is \$75 per application; AMS calculates the fee will be \$540 for calendar year 2021 using current publication fees. AMS typically receives only one or

two requests each year, so the overall cost to official agencies is not expected to be significant. AMS will review the cost to process and publish designation amendments and adjust the fees annually, as necessary.

Finally, this final rule removes §800.71(d)(3), which provides a flat application fee for operating a scale testing organization. FGIS hasn't approved such an organization in the past 5 years. States that operate as scale testing organizations, in addition to FGIS, provide service in areas that are not in reasonably close proximity to FGIS duty stations. Scale operators pay far less in travel costs by obtaining services provided by their local State scale testing organizations on behalf of FGIS. Additionally, this increases FGIS efficiency by reducing staff travel and allowing staff to be deployment to other mission duties.

Executive Orders 12866 and 13563

Executive Orders 12866 – Regulatory Planning and Review, and 13563 – Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the criteria of a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

AMS considered several alternatives to changes made by this rule, including reinstating the current fee or applying a standardized formula using one year of supervision tonnage versus the five-year supervision tonnage average. Ultimately, AMS determined that the proposed approach of recalculating the fee each year using a standard

formula based on a five-year supervision tonnage average would provide savings to the industry when the operating reserve balance exceeds FGIS's goal and would limit large fee increases following years where supervision tonnage volumes are significantly less. AMS expects changes made by this rule to benefit the grain industry by adjusting supervision fees as needed annually to reflect actual expenses related to grain inspections supervision and maintaining appropriate operating reserve balances. AMS does not expect the rule to provide any environmental, public health, or safety benefits. AMS has not identified any costs related to this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988 – Civil Justice Reform. This rule is not intended to have retroactive effect. The USGSA provides in Sec. 87g that no State or subdivision thereof may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. No administrative proceedings would be required before parties could file suit in court challenging provisions of this rule.

Executive Order 13175

This rule has been reviewed under E.O. 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 – 602), AMS has considered the economic impact of this action on small

entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

This rule sets fees for three different FGIS functions: (1) fees for FGIS Supervision, (2) fees for registration certificates and renewals for exporters of grain, and (3) fees for amending the designation of official agencies.

AMS has determined that this rule does not have a significant economic impact on a substantial number of small entities because most applicants (grain industry) that apply for these official services and are subjected to AMS supervision fees do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States to Canada and Mexico. There are approximately 9,500 off-farm storage facilities in the United States that could receive grain services from delegated States or designated agencies. AMS estimates 25 percent of these users would be considered small businesses based on criteria established by the Small Business Administration (13 CFR 121.201) (SBA). SBA uses the North American Industry Classification System (NAICS) to categorize various industry businesses. SBA defines small grain retailers and warehouse and storage facilities, NAICS codes 424510 and 493130, respectively, as those whose annual receipts do not exceed \$30,000,000 or who have no more than 200 employees, respectively.

With respect to fees for supervision, these fees are a minor amount compared to the total value of grain shipments. Carrier types shipped by small entities are submitted samples and trucks with a standardized weight of 23.95 metric tons and railcars with a standardized weight of 99.79 metric tons. Supervision fees assessed on these carriers at the current published rate are \$0.26 per truck (2020 corn market-year value of \$2,700) and \$1.10 per railcar (2020 corn market-year value of \$12,600).

The registration certificate and renewal fee applies to persons engaged in the business of buying grain for sale in foreign commerce and in the business of handling, weighing, or transporting grain for sale in foreign commerce. Under provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services were provided by AMS and official agencies on a fee basis for 97 registered exporters in CY 2020. Eighty-three of the registered entities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the SBA. In 2020, approximately fourteen small exporters registered with FGIS. As explained, with the registration fees for 2021 calculated to be \$315, FGIS believes the change in registration fees would have a minor effect on the small number of small business that register with FGIS.

Finally, the designation amendment fee applies to an official agency requesting a modification to its designation within the five-year designation period. AMS has 42 designated States and agencies, and 13 of these designated agencies meet the criteria for small entities established by the SBA. As explained earlier, the designation amendment fee for 2021 is calculated to be \$540. FGIS believes the revised designation amendment fee would have a minor impact on small businesses, since it typically receives no more than two modification requests per year.

The adoption of standardized AMS user-fee rate calculations for 2021 and beyond would benefit all inspection applicants, regardless of size, as fees would more closely reflect the current cost of inspections, and the fee calculation process would be more transparent. Through its annual review, AMS would be able to monitor the financial status of the grain supervision program to determine whether further adjustments are necessary.

AMS has determined this rule would not have a significant economic impact on a substantial number of entities as defined under the RFA because fewer than half of the applicants for grain inspection services meet the definition of small entities.

Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Paperwork Reduction Act and E-Government Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements for the program providing supervision of official agencies have previously been approved by OMB under control number 0580-0013. No additional reporting, record keeping, or other compliance requirements will be imposed as a result of this rule.

AMS is committed to complying with the E-Government Act (44 U.S.C. 3601 *et seq.*), to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For reasons set forth in the preamble, AMS amends 7 CFR part 800 as follows:

PART 800 - GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

2. Amend § 800.71 by:

- a. Revising paragraph (a)(2);
- b. Revising paragraph (b) introductory text;
- c. Revising the first sentence in paragraph (b)(1);
- d. Redesignating paragraph (b)(2) as paragraph (b)(3);

e. Adding new paragraph (b)(2); and

f. Revising paragraph (d).

The revisions and addition read as follows:

§800.71 Fees assessed by the Service.

(a) ***

(2) *Schedule B—Fees for Supervision of Official Inspection and Weighing Services Performed by Delegated States and Designated Agencies in the United States.*

The Service will assess a supervision fee per metric ton of domestic U.S. grain shipments inspected or weighed, or both, including land carrier shipments to Canada and Mexico.

For each calendar year, the Service will calculate Schedule B fees as defined in paragraph (b) of this section. The Service will publish a notice in the Federal Register and post Schedule B fees on the Agency's public website.

(b) *Annual review of fees.* For each calendar year, starting with 2021, the Service will review fees included in this section and publish fees each year according to the following:

(1) *Tonnage fees.* Tonnage fees in Schedule A in paragraph (a)(1) of this section will consist of the national tonnage fee and local tonnage fees and the Service will calculate and round the fee to the nearest \$0.001 per metric ton. * * *

(2) *Supervision fee.* Supervision fee in Schedule B in paragraph (a)(2) of this section will be set according to the following:

(i) *Operating reserve adjustment.* The operating reserve adjustment is the supervision program costs for the previous fiscal year divided by 2 less the end of previous fiscal year operating reserve balance.

(ii) *Supervision tonnage fee.* The supervision tonnage fee is the sum of the prior fiscal year program costs plus operating reserve adjustment divided by the average yearly

tons of domestic U.S. grain shipments inspected or weighed, or both, including land carrier shipments to Canada and Mexico during the previous 5 fiscal years. If the calculated value is zero or a negative value, the Service will suspend the collection of supervision tonnage fees for one calendar year.

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(d) *Miscellaneous fees for other services.* For each calendar year, the Service will review fees included in this section and publish fees in the Federal Register and on the Agency's public website.

(1) *Registration certificates and renewals.* The fee for registration certificates and renewals will be published annually in the Federal Register and on the Agency's public website, and the Service will calculate the fee using the noncontract hourly rate published pursuant to 7 CFR 800.71(a)(1) multiplied by five. If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce, or you are also in a control relationship with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce, you must complete an application and pay the published fee.

(2) *Designation amendments.* The fee for amending designations will be published annually in the Federal Register and on the Agency's public website. The Service will calculate the fee using the cost of publication plus one hour at the noncontract hourly rate. If you submit an application to amend a designation, you must pay the published fee.

Erin Morris, Associate Administrator,
Agricultural Marketing Service.

[FR Doc. 2021-19034 Filed: 9/2/2021 8:45 am; Publication Date: 9/3/2021]